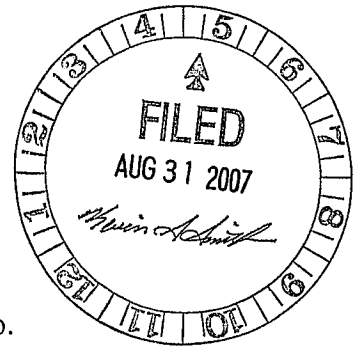


In the
Indiana Supreme Court



In the Matter of:)	Supreme Court Cause No.
Terry L. SMITH,)	91S00-0411-DI-484
Respondent.)	

JUDGMENT FOR RESPONDENT

Upon review of the report of the Hearing Officer appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Verified Complaint for Disciplinary Action," and the briefs of the parties, the Court finds that the Respondent did not engage in professional misconduct and enters judgment for Respondent.

The Commission alleged Respondent lied while testifying in his capacity as deputy prosecutor in a proceeding to dismiss a grand jury indictment against a business competitor, violating Professional Conduct Rule 3.3(a)(1), which prohibits knowingly making false statement before tribunal, and Professional Conduct Rule 8.4(c), which prohibits conduct involving fraud, deceit, dishonesty, or misrepresentation.

Respondent was a 50 percent owner of White County Abstract & Title Company ("White County Abstract"). In August 1992, two of its employees, Diane Blackwell and Connie Harmon, resigned without explanation. In October 1992, Indiana Abstract & Title Company ("Indiana Abstract") opened. Respondent asked a friend about the new competing business. The friend said he had heard Blackwell and Harmon had opened the business with the financial backing of local businessman John K. Freeman. On November 16, 1992, Respondent sent a letter ("Letter") to the clients of White County Abstract stating that two of White County Abstract's employees "went together with John Freeman to form an Abstract Company" and asking the clients for their continued business. (Findings of Facts and Conclusions of Law at 5.)

In October 1997, Freeman was the subject of a White County grand jury proceeding. At the request of the prosecutor, Respondent, who was a deputy prosecutor, filled in for the prosecutor for one day of the proceeding. On that day, the grand jury considered allegations against Freeman, and it later returned indictments against him.

Freeman filed a motion to dismiss the indictments, arguing, among other things, that the proceeding was tainted because Respondent could benefit economically from the indictment of a business competitor. In response, Respondent stated in an affidavit he did not know Freeman had an ownership interest in Indiana Abstract until Freeman filed his motion to dismiss. At the hearing on Freeman's motion ("Hearing"), Respondent denied doing anything to find out who owned Indiana Abstract or having any "information from any source whatsoever" prior to the grand jury proceeding "that Freeman had any connection in any way, shape or form, employee/owner/consultant/anything with Indiana Abstract and Title." (Findings of Facts and Conclusions of Law at 7.) The trial court denied the motion to dismiss. After a copy of the Letter came to the attention of Freeman or his attorney, Freeman filed a motion to correct error,

asserting the Letter suggested Respondent testified falsely at the Hearing. The trial court denied the motion.

The Commission filed its verified complaint against Respondent on November 18, 2004. Respondent admits some of his statements at the Hearing were inaccurate disclaims any intent to lie. After a hearing, the Hearing Officer concluded the Commission had not proven by clear and convincing evidence that Respondent intentionally lied, finding some of the questions posed to Respondent were compound and unclear. The Hearing Officer therefore recommended this matter be resolved in favor of Respondent.

A hearing officer is charged with determining whether alleged professional misconduct has been proven by clear and convincing evidence. *See* Admis. Disc. Rule 23(14)(h). This Court's review of disciplinary cases is *de novo* in nature, but the hearing officer's findings of fact carry great weight, particularly when based on direct observation of witnesses. *See In re Woolbert*, 672 N.E.2d 412, 414-15 (Ind. 1996); *In re Lively*, 658 N.E.2d 903, 904 (Ind. 1995).

In the current case, the Hearing Officer was in the best position to judge the credibility of Respondent's explanation of the inaccuracies of his testimony at the Hearing. Giving deference to her conclusion that evidence of the alleged misconduct was not clear and convincing, we accept her report and recommendation that judgment be entered for Respondent.

The Court therefore enters judgment for Respondent. The Hearing Officer appointed in this case is discharged.

The Clerk of this Court is directed to give notice of this order to the Hearing Officer and to the parties or their respective attorneys.

DONE at Indianapolis, Indiana, this 31st day of August, 2007.

FOR THE COURT

Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

Justices Dickson, Boehm, and Rucker concur.

Chief Justice Shepard and Justice Sullivan dissent, would reject the hearing officer's finding of no misconduct, and would impose a 90-day suspension from the practice of law with automatic reinstatement.